PL673
9/2/2014
2:13-cv-00193

Local Redistricting Objection Letters

Defendant's Exhibit # DE-005555

USA_00012622

7 JUL 1976

Mr. Lucius D. Bunton
Shafer, Gilliland, Davis,
Bunton & McCollum
Attorneys at Law
P. O. Drawer 1552
Odessa, Texas 79760

Dear Mr. Bunton:

This is in reference to the reapportionment of Commissioners' Court precincts in Crockett County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on May 8, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. The reapportionment in question was based on voter registration data. To determine whether this reapportionment would have the effect of abridging the vote of Mexican Americans in Crockett County this Department needs to know the population by race and ethnic group of the Commissioners' precincts established by the new plan. This information has not been provided to us, although we requested it.

Our experience indicates that Mexican Americans generally have a lower rate of voter registration than do Anglos. Thus an apportionment based on registration data is likely to have a dilutive effect on the vote of Mexican Americans. See Ely v. Klahr, 403 U.S. 108, 113-19 (1971) (Douglas, J., concurring). Because of the uncertainty extent in this redistricting plan due to the absence of reliable population statistics, we cannot conclude, as we must under the Voting Rights Act, that this reapportionment does not have the purpose of the effect of abridging the right to vote of Mexican Americans in Crockett County.

cc: Public File ✓
X1687

Defendant's Exhibit #

DE-005556

Therefore, I must, on behalf of the Attorney General, interpose an objection to the 1975 reapportionment of Crockett County.

Please be advised that the Attorney General will reconsider this determination if relevant statistical information is provided, or on the basis of other information showing that the apportionment does not have the proscribed discriminatory effect. However, until and unless the objection is withdrawn, the 1975 reapportionment plan is legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

D.J. 166-012-3
X1687

NOV 9 1977

Mr. Lucius D. Bunton
Shafer, Gilliland, Davis,
Bunton & McCollum
Attorneys at Law
P. O. Box Drawer 1552
Odessa, Texas 79760

Dear Mr. Bunton:

This is in reference to your request for reconsideration of the objection interposed by the Attorney General on July 7, 1976, to the 1975 redistricting plan for Crockett County, Texas. Additional information which you furnished in support of that request was received on August 16 and September 2 and 22, 1977.

As the July 7, 1976, letter indicated, the Attorney General's objection was based on the absence of reliable population statistics that would facilitate an appropriate evaluation of the redistricting plan. You now have supplied data from the results of a 1977 special census survey undertaken for Crockett County which has enabled us to make an analysis of the redistricting plan in accordance with the requirements of Section 5 of the Voting Rights Act.

In our reconsideration of this submission we have given careful consideration to the 1977 census data provided, the information furnished in connection with the initial submission, and comments and information provided by other interested parties. Population statistics from the special census show that Crockett County has a population which is 41.5%

Mexican American. Our analysis shows that under the old apportionment plan the concentration of Mexican American population was divided between adjoining commissioner precincts 1 and 4, each of which had more than enough population for an ideal district and each of which was slightly over 68% Mexican American. During the 1974 elections in precincts 2 and 4 of this plan a Mexican American was elected in precinct 4.

Our analysis further shows that, according to the 1977 census data, under the plan adopted in 1975 the Mexican American majority in precinct 4, where a Mexican American candidate had already been successful in 1974, was increased to 84% while the Mexican American majority in precinct 1 was reduced to 58%. In a subsequent election in precinct 1 in 1976 a Mexican American candidate was defeated by an Anglo candidate in a runoff. The county has provided no compelling reason, and we have not been able otherwise to discover one, for the seeming overloading of Mexican Americans into precinct 4, with the inevitable and concommitant reduction of the Mexican American percentage in precinct 1, especially when one effect of that configuration is to increase to 4.2% the deviation in precinct 1 which previously had been 2.9%.

Under these circumstances, therefore, we are unable to conclude that the redistricting before us does not discriminate against Mexican Americans. Accordingly, in view of our analysis and recent court decisions to which we feel obligated to give great weight, e.g., White v. Regester, 412 U.S. 755 (1973); Robinson v. Commissioners Court, Anderson County, 505 F.2d 674 (1974); Moore v. Leflore County Board of Election Commissioners, 502 F.2d 621 (1974), the Attorney General must decline to withdraw the objection interposed to the 1975 redistricting in Crockett County.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the redistricting does not have the prohibited purpose or effect. However, until and unless such a judgment is obtained, the 1975 Crockett County redistricting plan is legally unenforceable.

With regard to the polling place changes undertaken in conjunction with the 1975 reapportionment plan, the Attorney General does not interpose any objection. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes and our determination in no way seeks to address the question of the validity of the change in polling places under state law, in view of the legal unenforceability of the new districting.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

DJ 166-012-3
X1245

MAR 12 1976

Mr. Lacson Hall
Superintendent, Dumas Independent
School District
Box 852
Dumas, Texas 79029

Dear Mr. Hall:

This is in reference to the imposition of Numbered Post and Majority Vote requirements in the election of the School Board of the Dumas Independent School District, which changes were submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on January 13, 1976.

After a careful examination of the submitted changes, including consideration of demographic and geographic data, and comments from interested parties, we can not conclude as we must under the Voting Rights Act, that the use of a numbered post and majority vote requirement to elect members of the Dumas School Board, in the context of an at-large election system, will not have a discriminatory effect on the minority community in the Dumas Independent School District. Recent Supreme Court decisions, to which we feel obligated to give great weight, indicate that the combination of the above features may have the effect of abridging minority voting rights in the Dumas Independent School District. E.g., White v. Regester, 412 U.S. 755 (1973); Whitcomb v. Chavis, 403 U.S. 124 (1971).

For the foregoing reasons, I must on behalf of the Attorney General interpose an objection to the combination of the numbered post and majority vote requirements in the context of at-large elections. Of course, Section 5 permits seeking approval of all changes affecting voting by the United States District Court for the District of Columbia irrespective of whether the changes have been previously been submitted to the Attorney General.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

APR 16 1976

Mr. James W. Smith, Jr.
County Attorney
Frio County
P. O. Drawer V
Pearsall, Texas 78061

Dear Mr. Smith:

This is in response to your letter of January 19, 1976, in which you submitted to the Attorney General resolutions of the Frio County Commissioners' Court of July 13 and August 13, 1973, which redistricted the four commissioner precincts and established new voting precincts, respectively, pursuant to Section 5 of the Voting Rights Act of 1965. Your letter and the attached materials were received by this Department on February 23, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. Our review and analysis show that the commissioner precinct lines as drawn unnecessarily dilute Mexican-American voting strength in the county. According to the 1970 Census, Frio County is 69.1% Mexican-American, 29.8% Anglo and 1.1% black. According to information available to us, proposed Commissioner Precinct 3 is approximately 97% Mexican-American and deviates from the norm of an ideal (population) district of 2,790 by 499, thereby exceeding the norm by 17.9%. Meanwhile, Commissioner Precinct 2, approximately 60% Anglo, is 674 (-24%) people under the norm. Thus, it would appear that the precinct with the highest percentage of Mexican-Americans is the most under-represented while the precinct with the highest percentage of Anglos is the most overrepresented.

Our analysis further reveals that there is a history of ethnic bloc voting in Frio County. There is substantial evidence, including the absence of any Mexican-American representation on the 8-member reapportionment committee responsible for the plan under review, that Mexican-Americans are not afforded access to the political process in Frio County. When all of these considerations are noted, together with the configuration of the plan, particularly the elongated shape of Precinct 1 which emerges with only a 48% Mexican-American population, we cannot conclude, as we must under the Voting Rights Act, that this reapportionment does not have the purpose or effect of abridging the right to vote of the Mexican-American citizenry.

Accordingly, in view of our analysis and recent court decisions to which we feel obligated to give great weight, e.g., White v. Regester, 412 U.S. 755 (1973); Robinson v. Commissioners' Court, Anderson County, 505 F.2d 674 (1974), I must, on behalf of the Attorney General, interpose an objection to the 1973 redistricting of Frio County. In addition, since it is our understanding that state law requires that voting precinct lines conform with commissioner precinct lines, this objection also renders unenforceable any resulting changes in voting precincts.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the present submission does not have the purpose and will not have the effect of denying or abridging the right to vote to members of a language minority group in the county. However, until and unless such a judgment is obtained, the 1973 Frio County redistricting plan is legally unenforceable. Therefore, since it is our

understanding that primary elections are scheduled for two commissioner precincts on May 1, 1976, I would appreciate your advising me by April 23, 1976, of the steps you intend to take with respect to that election.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JAN 26 1976

Honorable Mark White
Secretary of State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to our letter of January 23, 1976, and in further reply to your submission of the subdistrictings of 9 multi-member Texas House of Representatives districts in House Bill 1097 of the 1975 Session of the Texas Legislature, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on November 26, 1975.

We responded to your submission prior to January 26, 1976, the last day of the 60-day period As set out in Section 51.22 of our procedural guidelines for the administration of Section 5, 28 C.F.R. §51.22:

> When a decision not to object is made within the 60-day period following receipt of a submission which satisfies the requirements of §51.10(a), the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the 60-day period which would require objection in accordance with §51.19.

cc: Public File (Rm. 920)
X0614

Such additional information has come to our attention and we have reexamined the submission of House Bill 1097 with regard to the effect of new single-member districts defined in House Bill 1097 for Nueces County, Districts 48A through 48C.

The additional information in this regard concerned the minority population within the single-member districting plans for Nueces County presented to the Court prior to its order of January 28, 1975, in Graves v. Barnes. During our initial examination of the districts set out in House Bill 1097 for Nueces County we erroneously considered the population statistics of the plan submitted to the Court by the State as statistics relative to the plan which the Court adopted. On that erroneous basis we had determined that the plan set out in House Bill 1097 would not dilute minority voting strength given the results that would flow from fairly drawn alternative districting plans.

Our evaluation of the new single-member districts in House Bill 1097 for Nueces County indicated that the district lines are drawn through a cognizable minority residential area known as "the corridor" in Corpus Christi resulting in an apportionment or fragmenting of that area into each of the 3 districts, only in one of which minorities represent a majority of the population. It was our understanding that in approaching the question of how to draw new single-member districts for Nueces County, the legislature utilized the theory that a fair districting of the county, given the county's population, should be designed to result in one "safe" Mexican-American district, one safe Anglo district, and one "swing" district with close to 50% Anglo and Mexican-American population.

We had no objection to this districting approach as long as it did not result in a dilution of minority voting strength and, as I explained above, given our erroneous understanding of available districting alternative we found no such dilution would result. However, we now realize that the districting plan for Nueces County adopted by the Court in Graves v. Barnes, which apportions the corridor into only 2 districts, results in 2 districts in which minorities represent a significant majority of the population. Thus, on the basis of our previous evaluation and in the light of population statistics of the districting plan ordered by the Court in Graves v. Barnes, it appears that fairly drawn alternative districting plans which avoid fragmenting the corridor into as many as 3 districts also would make a significant difference in the ability of minority residents of Nueces County to elect representatives of their choice. In addition, we have determined, as we had determined previously, that the result in House Bill 1097 for Nueces County does not appear to be necessary on the basis of natural boundaries or overriding considerations of district compactness.

Therefore, the remaining question is whether the legislative approach for the districting of Nueces County constitutes a compelling governmental justification for the results that it achieved in Nueces County. I believe it does not. Although the theory used in House Bill 1097 for apportioning the population of Nueces County could, under other circumstances, be considered to reflect a legitimate interest of the state, under the standards for our Section 5 review as enunciated in my letter of January 23, 1976, and given the facts as described above, I view the apportionment approach used in House Bill 1097 for

Nueces County as a minimization and thus a dilution of minority voting strength since it unnecessarily and unfairly limits minorities to only one district in which they would represent a majority of the population.

Accordingly, we are unable to conclude as we must under Section 5 that implementation of the districts 43A - 43C set out in House Bill 1097 for Nueces County will not have a discriminatory effect. Under these circumstances I must, on behalf of the Attorney General, interpose an objection to the implementation of the specified districts set out in House Bill 1097 for Nueces County. So that there be no misunderstanding, I should point out that the objection interposed herein is in addition to the objections interposed in my letter of January 23, 1976, to the implementation of the districts 7A - 7C and 32A - 32I set out in House Bill 1097 for Jefferson and Tarrant Counties.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these districts neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in Section 4(f) of the Act. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

I apologize for any inconvenience that may have been caused to you by our error in this matter.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

Department of Justice
Washington, D.C. 20530

JAN 23 1976

Honorable Mark White
Secretary of State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reply to your submission of the subdistrictings of 9 multimember Texas House of Representatives districts in House Bill 1097 of the 1975 Session of the Texas Legislature, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on November 26, 1975.

We have considered carefully the submitted changes and supporting materials as well as information and comments received from other interested parties and information derived from the proceedings in the cases consolidated sub nom, Graves v. Barnes, Civil Action No. A-71-CA-142 (W.D. Tex.). On the basis of our review and analysis, the Attorney General does not interpose an objection with regard to changes that may be effected by House Bill 1097 in Districts 1 through 6, 8 through 31, and 33 through 101. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

In conducting our Section 5 review of legislative districtings, such as those contained in House Bill 1097, we evaluate the effect of the

resulting districts on racial and language minority groups in the light of fairly drawn available districting alternatives and the legislature's affirmative duty as represented by White v. Regester, 412 U.S. 755 (1973), and related cases (see, e.g., City of Petersburg (Va.) v. United States, 354 F. Supp. 1021 (D. D.C. 1972), aff'd, 410 U.S. 962 (1973)) to assure that the voting rights of cognizable racial minorities are not minimized or diluted.

With respect to the effect of the new single-member districts defined in House Bill 1097 for Jefferson County, Districts 7A-7C, our analysis shows that the subdistricting may be affected to a substantial degree by the extent to which the boundaries of previously existing multimember district 7 are changed and the manner in which it is done. While alteration of the multimember district boundaries to accommodate the subdistricting would appear to be a legitimate consideration by the state, it also appears that, from available alternatives, the subdistricting lines adopted in House Bill 1097 have an unnecessary dilutive effect. The location of single-member district lines almost evenly divides the county's minority population among the county's three new single-member districts, none of the three districts has a significant minority population, such a division appears to be unnecessary on the basis of natural boundaries or overriding considerations of district compactness or on the basis of any compelling governmental justification, and at least one single-member district with a significant minority population would result under fairly drawn alternative districting plans.

Regarding Districts 32A-32I in Tarrant County it appears that portions of the new single-member district lines are drawn through cognizable minority residential concentrations resulting in an apportionment or fragmenting of those areas into 4 districts, only one of which has a significant minority population, while fairly drawn alternative districting plans would avoid placing portions of the minority residential concentrations in as many districts and would result in two districts with significant minority populations. We note that at least two of the districting alternatives presented to the Court prior to its order of January 28, 1975, in Graves v. Barnes, avoided the fragmenting of cognizable minority residential areas in Tarrant County that results from House Bill 1097. As we found with regard to the submitted districting in Jefferson County, the result in House Bill 1097 for Tarrant County does not appear to be necessary on the basis of natural boundaries or overriding considerations of district compactness or on the basis of any compelling governmental justification.

Thus, our evaluation indicates that the fragmenting of cognizable minority residential concentrations in Jefferson and Tarrant Counties will have a dilutive effect on minority voting strength, and accordingly, we are unable to conclude as we must under Section 5 that implementation of the districts 7A-7C and 32A-32I set out in House Bill 1097 for Jefferson and Tarrant Counties will not have a discriminatory effect. Under these circumstances I must, on behalf of the Attorney General, interpose an objection to the implementation of the specified districts set out in House Bill 1097 for Jefferson and Tarrant Counties.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these districts neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in Section 4(f) of the Act. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

JAN 26 1976

Honorable Mark White
Secretary of State of Texas
Capitol Station
Austin, Texas 78711

Dear Mr. Secretary:

This is in reference to our letter of January 23, 1976, and in further reply to your submission of the subdistrictings of 9 multi-member Texas House of Representatives districts in House Bill 1097 of the 1975 Session of the Texas Legislature, to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965. Your submission was received on November 26, 1975.

We responded to your submission prior to January 26, 1976, the last day of the 60-day period As set out in Section 51.22 of our procedural guidelines for the administration of Section 5, 28 C.F.R. §51.22:

> When a decision not to object is made within the 60-day period following receipt of a submission which satisfies the requirements of §51.10(a), the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the 60-day period which would require objection in accordance with §51.19.

cc: Public File (Rm. 920)
X0614

Such additional information has come to our attention and we have reexamined the submission of House Bill 1097 with regard to the effect of new single-member districts defined in House Bill 1097 for Nueces County, Districts 48A through 48C.

The additional information in this regard concerned the minority population within the single-member districting plans for Nueces County presented to the Court prior to its order of January 28, 1975, in Graves v. Barnes. During our initial examination of the districts set out in House Bill 1097 for Nueces County we erroneously considered the population statistics of the plan submitted to the Court by the State as statistics relative to the plan which the Court adopted. On that erroneous basis we had determined that the plan set out in House Bill 1097 would not dilute minority voting strength given the results that would flow from fairly drawn alternative districting plans.

Our evaluation of the new single-member districts in House Bill 1097 for Nueces County indicated that the district lines are drawn through a cognizable minority residential area known as "the corridor" in Corpus Christi resulting in an apportionment or fragmenting of that area into each of the 3 districts, only in one of which minorities represent a majority of the population. It was our understanding that in approaching the question of how to draw new single-member districts for Nueces County, the legislature utilized the theory that a fair districting of the county, given the county's population, should be designed to result in one "safe" Mexican-American district, one safe Anglo district, and one "swing" district with close to 50% Anglo and Mexican-American population.

We had no objection to this districting approach as long as it did not result in a dilution of minority voting strength and, as I explained above, given our erroneous understanding of available districting alternative we found no such dilution would result. However, we now realize that the districting plan for Nueces County adopted by the Court in Graves v. Barnes, which apportions the corridor into only 2 districts, results in 2 districts in which minorities represent a significant majority of the population. Thus, on the basis of our previous evaluation and in the light of population statistics of the districting plan ordered by the Court in Graves v. Barnes, it appears that fairly drawn alternative districting plans which avoid fragmenting the corridor into as many as 3 districts also would make a significant difference in the ability of minority residents of Nueces County to elect representatives of their choice. In addition, we have determined, as we had determined previously, that the result in House Bill 1097 for Nueces County does not appear to be necessary on the basis of natural boundaries or overriding considerations of district compactness.

Therefore, the remaining question is whether the legislative approach for the districting of Nueces County constitutes a compelling governmental justification for the results that it achieved in Nueces County. I believe it does not. Although the theory used in House Bill 1097 for apportioning the population of Nueces County could, under other circumstances, be considered to reflect a legitimate interest of the state, under the standards for our Section 5 review as enunciated in my letter of January 23, 1976, and given the facts as described above, I view the apportionment approach used in House Bill 1097 for

Nueces County as a minimization and thus a dilution of minority voting strength since it unnecessarily and unfairly limits minorities to only one district in which they would represent a majority of the population.

Accordingly, we are unable to conclude as we must under Section 5 that implementation of the districts 43A - 43C set out in House Bill 1097 for Nueces County will not have a discriminatory effect. Under these circumstances I must, on behalf of the Attorney General, interpose an objection to the implementation of the specified districts set out in House Bill 1097 for Nueces County. So that there be no misunderstanding, I should point out that the objection interposed herein is in addition to the objections interposed in my letter of January 23, 1976, to the implementation of the districts 7A - 7C and 32A - 32I set out in House Bill 1097 for Jefferson and Tarrant Counties.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these districts neither have the purpose nor will have the effect of denying or abridging the right to vote on account of race or color or in contravention of the guarantees set forth in Section 4(f) of the Act. However, until and unless such a judgment is obtained, the provisions objected to are unenforceable.

I apologize for any inconvenience that may have been caused to you by our error in this matter.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

X5572
[FACSIMILE]

October 13, 1976

Honorable Leo Darley
County Judge
County Courthouse
Uvalde, Texas 78801

Dear Judge Darley:

This is in reference to the reapportionment of Commissioner's Court Precincts in Uvalde County, Texas submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on August 14, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. Our review and analysis shows that, according to the 1970 Census, Uvalde County is 50.7% Mexican-Americans, 47.5% Anglo and 1.8% Black. Information available to us indicates that Commissioner Precinct 2 under the redistricting plan has an overwhelming concentration of Mexican-Americans, and in addition exceeds the norm of an ideal (population) district by a percentage of at least 11%. The other precincts, two of which are substantially underrepresented, apparently have deviations of similar scope resulting in a total deviation range in excess of 20%. Thus, it would appear that the precinct with the highest percentage of Mexican-Americans is the most underrepresented while at least two of the remaining precincts, each with evident Anglo population majorities, show deviations indicating overrepresentation.

We note that the reapportionment is based on registered voter statistics. Our experience indicates that Mexican-Americans generally have a lower rate of voter registration than do Anglos. Thus an apportionment based on registration data is likely to have a dilutive effect on the vote of Mexican-Americans. See Ely v Klahr, 403 U.S. 108, 113-15 (1971) (Douglas, J., concurring). Our analysis further shows that there is evidence that Mexican-Americans have not been afforded access to the political process in Uvalde County. When these considerations are noted, together with the configuration of the plan, particularly with the elongated hour-glass shape of precinct 1 which is developed with the Mexican-American population in the minority, we cannot conclude, as we must under the Voting Rights Act, that this reapportionment does not have the purpose or effect of abridging the right to vote of the Mexican-American citizens of Uvalde County.

Accordingly, in view of our analysis and recent court decisions to which we feel obligated to give great weight, e.g., White v. Regester, 412 U.S. 755 (1975); Robinson v. Commissioner's Court, Anderson County, 505 F.2d 674 (1974), I must, on behalf of the Attorney General, interpose an objection to the 1973 redistricting of Uvalde County.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the redistricting plan does not have the purpose and will not have the effect of denying or abridging the right to vote to members of a language minority group in the County. However, until and unless such a judgment is obtained, the 1973 Uvalde redistricting plan is legally unenforceable.

Sincerely,

J. STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

JUL 27 1976

Mr. Hayden Burns
Butler, Binion, Rice, Cook
& Knapp
Attorneys at Law
1100 Esperson Building
Houston, Texas 77002

Dear Mr. Burns:

This is in reference to the redistricting of County Commissioner and Justice Precincts and change in election precincts of Waller County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on May 28, 1976.

We have considered the submitted changes and supporting materials as well as information and comments received from other interested parties. According to the 1970 Census, Waller County is 52.5% black, 43.3% white and 3.5% Mexican-American.

Racial breakdowns, by race, for the old and new commissioner precincts were not supplied by the County. A breakdown of registered voter figures, by race, for the old and new commissioner precincts is not a sufficient means by which to evaluate the redistricting plan. Our experience indicates that blacks have a lower rate of voter registration than do whites. Thus an apportionment based on registration data is likely to have a dilutive effect on the vote of blacks. See Ely v. Klahr, 403 U.S. 108, 118-119 (1971) (Douglas, Jr., concurring). Further, this approach to reapportionment has been upheld by the Supreme Court only when it produces a distribution of legislators not substantially different from that which would have resulted from the use of a permissible population base (Burns v. Richardson, 384 U.S. 73, 93(1966)).

cc: Public File
X2128-2130

In this regard, we take particular note of the fact that in drawing this reapportionment plan approximately 2,000 resident students at predominantly black Prairie View A & M University were excluded. You state in your May 26, 1976 letter that these Prairie View A & M University students who do not meet the residence requirements for voting outlined in Article 5.05 of the Texas Election Code were not considered to be residents of Commissioner Precinct 2. However, the statutory presumption against student residency outlined in Article 5.05(a) of the Code was found to violate the Fourteenth Amendment's equal protection clause (Whatley v. Clark, 482 F.2d 1230 (5th Cir. 1973)) and the county has presented no compelling reason for treating students different from other potential voters.

Because the submitted plan excludes a significant portion of the potential black voters of Waller County, the commissioner precincts do not appear to accurately reflect black voting strength in the County. Further, since the population of the only black majority district is an estimated 3,000 more than the other districts with the inclusion of these students, the black residents of Commissioner Precinct 2 are underrepresented in relation to the other county residents. Therefore, we cannot conclude, as we must under the Voting Rights Act, that this reapportionment does not have the purpose or effect of abridging the right to vote of the black citizenry.

Accordingly, in view of our analysis and recent court decisions to which we feel obligated to give great weight, I must, on behalf of the Attorney General, interpose an objection to the 1975 redistricting of Waller County.

Of course, as provided by Section 5 of the Voting Rights Act, you have the alternative of instituting an action in the United States District Court for the District of Columbia seeking a declaratory judgment that the present submission does not have the purpose and will not have the effect of denying or abridging the right to vote of blacks in the County. However, until and unless such a judgment is obtained, the 1975 Waller County redistricting plan is legally unenforceable.

Sincerely,

J. Stanley Pottinger
Assistant Attorney General
Civil Rights Division

AUG 1 1977

Honorable L. W. Scott
County Judge
Caldwell County
Post Office Box 1050
Lockhart, Texas 78644

Dear Judge Scott:

This is in reference to the redistricting of commissioner precincts in Caldwell County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your original submission was received on April 3, 1976. Additional information was received on September 7, 1976, and June 3, 1977.

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from interested parties. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the 1973 redistricting of commissioner precincts in Caldwell County will not have a discriminatory effect on minority groups in the county.

Our analysis reveals that Mexican Americans constitute over 30 percent of the population of Caldwell County and that blacks constitute between 13 and 21 percent of the county population. To make a determination under Section 5 with respect to the commissioner precincts we need to know the racial composition of these precincts. The statistical information that you have provided does not enable us to determine this racial composition. Although our independent research suggests preliminarily that the precincts do not have a discriminatory effect, we have no basis for being confident in this conclusion.

The Attorney General's Procedures for the Administration of Section 5 of the Voting Rights Act provide that:

> If the evidence as to the . . . effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the District Court, enter an objection and so notify the submitting authority.

(28 C.F.R. 51.19).

Accordingly, I must, at this time, on behalf of the Attorney General, interpose an objection to the redistricting of commissioner precincts in Caldwell County. However, we have requested the Census Bureau to provide us with enumeration district statistics on the location of Mexican Americans in the county. Should this information indicate that the redistricting plan does not fragment the minority population of Caldwell County or should the county be able to provide new information showing that the redistricting does not adversely effect the potential of minority groups in the county to elect a candidate of their choice, we will be willing to reconsider the objection.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

APR 2 8 1978

Mr. James L. Anderson, Jr.
County Attorney
Aransas County Courthouse
Rockport, Texas 78382

Dear Mr. Anderson:

This is in reference to the redistricting of commissioner precincts of Aransas County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended.

Your initial letter was received on December 21, 1977. On February 17 and March 31, 1978, we requested additional information with respect to this submission to enable us to analyze whether the redistricting has the purpose or will have the effect of abridging the right to vote on account of race, color, or membership in a language minority group. Your responding letters, received by us on February 26, and April 12, 1978, provided some, but not all, of the information requested. Although the submission of the redistricting cannot be considered complete, you have requested that we make a determination as soon as possible on the basis of the information available to us.

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See Georgia v. United States, 411 U.S. 526 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, C.F.R. 51.19, state:

> If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the district court, enter an objection . . .

We have analyzed the information contained in your submission and data obtained from the Bureau of the Census in the light of relevant judicial decisions. See, e.g., Kirksey v. Hinds County Board of Supervisors, 554 F.2d 139 (5th Cir. 1977), cert. denied, 46 U.S.L.W. 3357 (Nov. 16 1977); Robinson v. Commissioners Court, 505 F.2d 674 (5th Cir. 1974). Our analysis reveals that the 1970 population of Aransas County was 6,902, of which 2,372 or 37 percent were of Spanish heritage. The 1975 population of the county has been estimated to have been 10,507; the Spanish heritage proportion of this number is not known. In 1970 the black population of the county was 411, or about 5 percent of the total. The 1975 black population is not known. We have not been provided the total population of the four commissioner precincts, either under the old plan or the new plan. Thus we do not know the extent to which the old plan deviated from the requirements of the one person, one vote principle, the extent to which any such deviation has been remedied by the new plan, nor the effect, if any, of that remedying upon the minority voting strength. We also have not been provided with the racial composition of the old or new districts.

On the basis of voter registration statistics and Fifth Count data from the 1970 census, however, it appears that a concentration of Mexican American population in the City of Rockport was divided, under the old plan, between commissioner precincts 1 and 2, and that this division is maintained under the new plan. We note further that these commissioner precincts with the greatest concentration of Mexican American registered voters, numbers 1 and 2, also have significantly more registered voters than the remaining two precincts. If, as is frequently the case, the Mexican American registration rate is lower than the Anglo registration rate, this leads to the distinct possibility that the districting plan fails to satisfy the one person, one vote principle, and that the underrepresented precincts are those with the greatest Mexican American concentration. See Ely v. Klahr, 403 U.S. 108 (1971).

In addition, it is our understanding that minorities were not consulted with respect to the creation or adoption of the new plan, and that no minorities have been elected to the Commissioners Court. An analysis of election returns and voter registration data by voter precinct leads to an inference that support for Mexican American candidates comes largely from Mexican American voters and, thus, that racial bloc voting exists.

Under these circumstances, we are unable to conclude that the county has carried its burden of proving that the submitted redistricting plan for Aransas County will not have the effect of diluting the vote of Mexican Americans in Aransas County. Accordingly, on behalf of the Attorney General, I must interpose an objection to this plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.2(b), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc: Honorable John D. Wendell
County Judge

Ms. Lola Bonner, Chairman
Aransas County Democratic Party

Mr. Harold Shirey, Chairman
Aransas County Republican Party

Honorable Allan Stovall
County Judge
Edwards County
Post Office Box 348
Rocksprings, Texas 78880

Dear Judge Stovall:

This is in reference to the redistricting of commissioner precincts in Edwards County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 27, 1978.

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from interested parties. Our analysis reveals that, according to the 1970 Census, Mexican Americans constitute approximately 44% of the population of Edwards County and are concentrated in the City of Rocksprings. No Mexican Americans have been elected to the Commissioners Court under the prior districting plan. Under the submitted redistricting plan, the Mexican American population in the county has been almost evenly distributed among the four commissioner precincts. The result of this division of a highly concentrated minority group is to minimize and thus dilute minority voting strength since it assures that Mexican Americans will not represent a majority of the population in any one commissioner precinct. See Kirksey v. Board of Supervisors of Hinds County, 554 F.2d 139 (5th Cir. 1977), cert. denied, 98 S.Ct. 512 (1977), and Robinson v. Commissioners Court, 505 F.2d 674 (5th Cir. 1974). Our analysis further reveals that rational and compact alternative districting could achieve population equality among the four commissioner precincts while at the same time achieving a precinct system that would more accurately reflect Mexican American voting strength in Edwards County.

Case 2:13-cv-00193 Document 670-15 Filed on 11/11/14 in TXSD Page 36 of 96

Therefore, on the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the submitted redistricting of commissioner precincts in Edwards County does not have the purpose and will not have the effect of discriminating on account of membership in a language minority group. Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting plan for Edwards County.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.2(b), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan for Edwards County legally unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Case 2:13-cv-00193 Document 670-15 Filed on 11/11/14 in TXSD Page 37 of 96

AUG 8 1978

Honorable Ernest F. Smith
County Judge
Harrison County
Post Office Drawer A
Marshall, Texas 75670

Dear Judge Smith:

This is in reference to the 1975 redistricting of commissioner precincts in Harrison County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended. Your original submission was received on March 25, 1976. Additional information was requested on May 24, 1976 but to date has not been received.

Under Section 5 the burden is on the jurisdiction proposing a voting change to show that the new practice or procedure is not discriminatory in purpose or effect. The burden of proof is the same when a submission is made to the Attorney General as it would be in a suit for a declaratory judgment under Section 5 brought in the United States District Court for the District of Columbia. See Georgia v. United States, 411 U.S. 526 (1973). The Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19, state:

> If the evidence as to the purpose or effect of the change is conflicting, and the Attorney General is unable to resolve the conflict within the 60-day period, he shall, consistent with the above-described burden of proof applicable in the district court, enter an objection . . .

cc: Public File

We have given careful consideration to the information originally furnished by you as well as Bureau of the Census data and information and comments from interested parties. In our analysis we are guided by relevant judicial decisions. See, for example, Kirksey v. Board of Supervisors of Hinds County, 554 F.2d 139 (5th Cir.) cert. denied, 6 U.S.L.W. 3357 Nov. 18 (1977); Robinson v. Commissioners Court, 505 F.2d 674 (5th Cir. 1974).

Our analysis reveals that blacks constitute 36 percent of the population of Harrison County. The statistical information that you have provided does not enable us to compare the racial composition of the new commissioner precincts with that of the old. Our research indicates that the county's black population is fairly evenly distributed among the four precincts and, in addition, we understand that [illegible] blacks were not consulted concerning the creation of this plan. We note also that blacks have not been elected to the county commission or to other county offices.

Under these circumstances we are unable to conclude, as we must under the Voting Rights Act, that the new redistricting plan for commissioner precincts does not have the purpose and will not have the effect of diluting minority voting strength in Harrison County. Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting of commissioner precincts in Harrison County.

Under the Procedures for the Administration of Section 5 of the Voting Rights Act (42 C.F.R. 51.21(b) and(c), 51.23, and 51.24) you may request the Attorney General to reconsider this objection. In addition, Section 5 permits you to seek a declaratory judgment from the United States District Court for the District of Columbia that this change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. However, until the objection is withdrawn or such a judgment is rendered by that Court, the legal effect of the objection by the Attorney General is to render the change unenforceable.

As this matter is the subject of litigation in the District Court for the Eastern District of Texas, Marshall Division (Watson v. Harrison County, C.A. No. M-75-45-CA), I am taking the liberty of sending a copy of this letter to United States District Judge William M. Steger and to counsel in that case.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

cc:
United States District Judge William M. Steger
Larry R. Daves, Esquire
Phillip Erin, Esquire

APR 14 1978

Mr. William T. Armstrong
Foster, Lewis, Langley, Gardner
& Banack
Attorneys at Law
1655 Frost Bank Tower
San Antonio, Texas 78205

Dear Mr. Armstrong:

This is in reference to the reapportionment of commissioner precincts in Medina County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on March 13, 1978. In accordance with your request expedited consideration has been given this submission pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22).

We have given careful consideration to the information furnished by you as well as Bureau of the Census data and information and comments from other interested parties. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the submitted reapportionment of commissioner precincts in Medina County will not have a discriminatory effect on the minority community of the county.

Our analysis reveals that, according to the 1970 Census, Mexican Americans constitute approximately 47% of the population of Medina County. Under the present plan, the county's population is disproportionately distributed among the four precincts, violating the one person-one vote principle. Mexican Americans constitute 56.69% of the population in Precinct 1 and 49.68% of Precinct 3. While we recognize that the proposed plan substantially remedies the one person-one vote problems in the existing plan, in our view the effect of the new plan is to perpetuate denial of access by Mexican Americans to the political process in Medina County.

cc: Public File
A4881

In spite of the Mexican American 56.69% population majority in Precinct 1 that group has been unable to achieve representation on the County Commission. We are, therefore, unable to conclude that the new plan's precincts having 55.66% and 50.89% Mexican-American majorities would serve to remove the political disadvantage currently suffered by the minority community in Medina County. See, e.g., Kirksey v. Board of Supervisors of Hinds County, 554 F.2d 139 (1977).

Under these circumstances, therefore, I must, on behalf of the Attorney General, interpose an objection to the reapportionment plan for Medina County here under submission.

We have noted that widespread publicity was given and public input was invited in connection with the adoption of this plan. We further note that at least two other plans were considered, one of which was offered by the Mexican American Legal Defense and Educational Fund (MALDEF). The MALDEF plan, while noncontiguous due to the inclusion in Precinct 1 of all of several separate segments of Census enumeration district (ED) 7, contains a precinct with a significant Mexican-American majority of 74% and could easily be modified to remove the contiguity problems while only slightly increasing the deviation.

Sections 51.23 to 51.25 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.23-51.25) permit reconsideration of the objection should you have new information bearing on the matter or should the County Commission alter its plan so as to alleviate the dilutive effects discussed above. We are aware of the upcoming elections scheduled for May 6, 1978, and in view of that the Attorney General will be happy to expedite any such request for reconsideration. In any event please notify us immediately, by telephoning Voting Section Attorney David H. Hunter at 202/739-3849, of the action the Commissioners Court plans to take.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor the effect of abridging the right to vote on account of race, color or membership in a language minority group. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court is obtained, the legal effect of the objection by the Attorney General is to render the change in question unenforceable.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

MAR 24 1978

Mr. Mike Westergren
Nueces County Attorney
Nueces County Courthouse
Corpus Christi, Texas 78401

Dear Mr. Westergren:

This is in reference to the reapportionment of commissioner precincts in Nueces County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed upon our receipt on February 13, 1978, of the supplemental material you provided. In accordance with your request we have expedited our consideration of this matter pursuant to the procedural guidelines for the administration of Section 5 (28 C.F.R. 51.22).

We have given careful consideration to the information furnished by you as well as Bureau of the Census data, information and comments from other interested parties, and materials in our files from previous Nueces County submissions. On the basis of our analysis, we are unable to conclude, as we must under the Voting Rights Act, that the submitted reapportionment of commissioner precincts in Nueces County will not have a discriminatory effect on minority groups in the county.

Our analysis reveals that, according to the 1970 Census, Mexican Americans constitute approximately 44% of the population of Nueces County. Under the submitted reapportionment plan, Mexican Americans would constitute 52% of the population of Commissioner Precinct 2 and 81.6% of the population of Commissioner Precinct 3. Under the present plan, Mexican Americans constitute 44% of the population of Commissioner Precinct 2 and 82.5% of the population of Commissioner Precinct 3. While we recognize that the proposed plan might be considered ameliorative, in our view there also are substantial indications that the plan sufficiently perpetuates denial of access by Mexican Americans to the political process in Nueces County as to make it constitutionally impermissible within the meaning of Beer v. United States, 425 U.S. 130 (1976).

Factors indicative of denial of access to the political process were considered by the Court when reviewing the Texas state at-large elective legislative districts for Nueces County (Graves v. Barnes, 378 F. Supp.640, 658-661 (1974)). The court there found that under the at-large system the Mexican American minority population in Nueces County had less opportunity than other residents to participate in the political processes and to elect legislators of their choice. We have been provided with no basis for concluding that the proposed reapportionment plan for the Nueces County Commissioners' Court will not perpetuate this denial. By overly concentrating the Mexican American population in one precinct (Commissioner Precinct 3) the plan has the effect of minimizing the impact of the Mexican American vote in other precincts, notably Precinct 2. It appears that fairly drawn alternative reapportionment plans could easily avoid this result.

Under these circumstances, therefore, we are unable to conclude, as we must under the Voting Rights Act, that the plan does not discriminate against Mexican American voters. Accordingly, on behalf of the Attorney General, I must interpose an objection to the reapportionment plan here under submission.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the District Court for the District of Columbia that this change has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, Sections 51.23 to 51.25 of the Attorney General's Section 5 guidelines (28 C.F.R. 51.23-51.25) permit reconsideration of the objection should you have new information bearing on the matter. However, until such time as the objection may be withdrawn or a judgment from the District of Columbia Court is obtained, the legal effect of the objection by the Attorney General is to make the change in question unenforceable.

Sincerely,

JOHN E. HUERTA
Acting Assistant Attorney General
Civil Rights Division

A1097' A4610;
A3970-71

MAR 24 1978

Mr. George Wikoff
City Attorney
City of Port Arthur
P. O. Box 1089
Port Arthur, Texas 77640

Dear Mr. Wikoff:

This is in reference to the consolidation of the Cities of Port Arthur, Lakeview, and Pear Ridge, Texas, and to the increase in size and redistricting of residency districts for the consolidated city submitted to the Attorney General for review under Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed by our receipt of supplemental information on February 21, 1978. In accordance with your request, we have given expedited consideration to this submission pursuant to the Procedures for the Administration of Section 5, 28 C.F.R. 51.22.

Section 5 requires the Attorney General to examine submitted changes affecting the electoral process to determine whether they have the purpose or will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In making this determination on behalf of the Attorney General, we are guided by the legal principles developed by the courts in the same or analogous situation. The principal cases dealing with the evaluation of a change in the composition of a municipal electorate under Section 5 are City of Richmond v. United States, 422 U.S. 358 (1975) and City of Petersburg v. United States, 354 F. Supp. 1021 (D.D.C. 1972), affirmed, 410 U.S. 962 (1973). Following

these cases, we have considered the effect of the consolidation on the voting strength of the minority population in the affected area, racial voting patterns, and the method of election to the city council of the City of Port Arthur. Our analysis is based on the materials and information you have provided as well as on information provided by and views of other interested persons.

Our analysis has revealed that, according to 1970 Census figures, prior to the consolidation blacks constituted 41.0 percent of the population of Port Arthur and virtually none of the population of Lakeview and Pear Ridge. Blacks will constitute 35.5 percent of the population of the consolidated city. Thus, the consolidation results in a significant dilution of black voting strength in Port Arthur.

Our analysis of election returns for Port Arthur elections also reveals an apparent unwillingness on the part of the white electorate to support candidates favored by black voters in the city. This conclusion is corroborated by the findings of Graves v. Barnes, 378 F. Supp. 640, 648-50 (W.D. Texas, 1974) vacated on other grounds sub nom. White v. Regester, 412 U.S. 755 (1973) where the district court found that minorities had been excluded from effective and meaningful participation in Jefferson County, where Port Arthur is located. Because the city council of Port Arthur is elected at-large, the necessary effect of the consolidation would appear to be an enhancement of the power of the white majority to exclude blacks from effective participation in the political process. See City of Richmond, supra, 422 U.S. at 370.

We have considered whether the addition of a seventh council member and the redrawing of residency district lines to create a second district the population of which is more than 90 percent black sufficiently minimizes the dilution of black voting strength to enable the consolidation to satisfy the judicial standards under

Section 5. See City of Petersburg v. United States, 354 F. Supp. at 1031. However, these changes do not change the electorate that selects members of the city council and, thus, do nothing to counteract the increase in the control of the white electorate brought about by the consolidation.

Under these circumstances we are unable to conclude, as we must under the Voting Rights Act, that the consolidation and redrawing of residency district lines will not have the effect of abridging the right to vote on account of race or color. Accordingly, on behalf of the Attorney General, I must interpose an objection to the consolidation and the redistricting. We do not object to the increase in size of the council.

Consistent with the decisions in Petersburg and Richmond cited above, the Attorney General will reconsider his objection to the consolidation should the City of Port Arthur undertake to elect members of its city council from fairly-drawn single-member districts. In addition, you have the right under the Procedures for the Administration of Section 5, 28 C.F.R. 51.21(b), 51.23, and 51.24, to request the Attorney General to reconsider this objection, and you have the right provided by Section 5 to seek a declaratory judgment from the United States District Court for the District of Columbia that the consolidation has neither the purpose nor the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. However, until the objection has been withdrawn by the Attorney General or such a judgment rendered by the District Court, the legal effect of the objection by the Attorney General is to render the consolidation legally unenforceable insofar as it affects voting in the City of Port Arthur.

Because of the pending litigation involving this matter, Mosely v. Sadler, C.A. No. B-78-69-CA (E.D. Tex.), I am taking the liberty of sending copies of this letter to the Court and to counsel for the plaintiff.

Sincerely,

John E. Huerta
Acting Assistant Attorney General
Civil Rights Division

cc: Hon. William M. Steger
Judge, U.S. District Court for the
Eastern District of Texas
Beaumont Division

David R. Richards, Esq.

United States Department of Justice
WASHINGTON, D.C. 20530
ASSISTANT ATTORNEY GENERAL

FEB 1, 1979

Mr. Dennis D. Clark
City Manager
City of Beeville
100 West Corpus Christi Street
Beeville, Texas 78102

Dear Mr. Clark:

This is in reference to the adoption of the single-member district method of electing the City Council of the City of Beeville, the designation of five single-member districts for that purpose, and other electoral changes occasioned by the adoption of the new electoral method, effected by Ordinance No. 1106 (1973) and by the approval of Proposition One by the electorate of the City of Beeville in the election of April 3, 1973, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, as amended. Your submission was completed on December 4, 1978.

Under Section 5 the submitting jurisdiction has the burden of proving both that the change in question was not adopted with a discriminatory purpose and that its effect will not be discriminatory. See Beer v. United States, 425 U.S. 130 (1976); Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978), affirmed, 47 U.S.L.W. 3391 (Dec. 4, 1978)(No. 78-70); Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.19.

Mexican Americans constitute approximately 55 percent of the population of Beeville. The City Council of Beeville has five members, who are elected to staggered two-year terms. Prior to the adoption

of the changes in question, members of the council were elected at-large, and candidates favored by the Mexican American electorate had frequently been elected. The charter amendment providing for the single-member district system of electing council members was adopted in what appears to have been a referendum polarized between Mexican American and Anglo voters, with predominantly Mexican American precinct one voting against the proposition by a significant margin and predominantly Anglo precinct two voting in favor by an equally significant margin. Our analysis of the demographic data and maps you have provided indicates that the effect of the adoption of the single-member district plan may be to restrict the influence of the Mexican American electorate in Beeville to districts one and two, although under the prior at-large system or under alternative single-member district plans Mexican Americans could potentially have greater influence.

According to the statistics you have provided, there are significant differences in population among the five districts. The population of district one, the district with the smallest population, is only equal to 53.3 percent of the population of district five, the district with the greatest population. We cannot determine that districts more equal in population would not have enhanced the electoral strength of Mexican Americans. Reservations with respect to the reliability of the statistics you have provided also prevent us from determining that the submitted plan does not have a discriminatory effect. According to the registered voter and voting age population statistics for the five wards that you have provided, 126.0 percent of the voting age population of district one are registered to vote, while only 57.8 percent of the voting age population of district five are registered. These statistics suggest that either the population or the registration statistics you have provided are inaccurate.

Under these circumstances I am unable to conclude as I must under the Voting Rights Act, that the single-member district method of election established by Ordinance No. 1106 neither has a discriminatory purpose

nor will have a discriminatory effect. Accordingly, on behalf of the Attorney General, I must interpose an objection pursuant to Section 5 to the submitted method of election and other related electoral changes.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the single-member district method of election established by Ordinance No. 1106 does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request reconsideration of this objection by the Attorney General. However, until the judgment from the District Court is obtained or the objection withdrawn, the effect of the objection by the Attorney General is to make the method of election established by Ordinance No. 1106 legally unenforceable. As a result, the at-large system previously in effect remains the legal electoral system for the City of Beeville.

If you choose to ask the Attorney General to reconsider this objection, the following information would be helpful:

1. An explanation of the voter registration rates that appear to exist for the five districts of the City of Beeville.

2. Elections returns by precinct or other information that would show whether Mexican Americans and Anglos constitute separate voting blocs in Beeville.

3. Information that will show why Beeville adopted the single-member district method of election over the at-large system or other alternatives and why the particular plan contained in Ordinance No. 1106 was adopted instead of alternatives. In particular,

we find in the materials you have provided references to meetings of Subcommittee No. 2 of the Charter Revision Commission on December 14 and 26, 1972, and to a meeting of the Commission on February 8, 1973, but minutes of these meetings were not provided. In addition, the minutes of the February 9, 1973, City Council meeting indicate that Ordinance No. 1106 was adopted unanimously, although we have been informed that Messrs. Martinez and Munoz voted against the adoption of the ordinance. A clarification of these matters would assist our reconsideration.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the City of Beeville plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Voting Section Attorney David Hunter at 202/633-3849.

Sincerely,

Drew S. Days III

Drew S. Days III
Assistant Attorney General
Civil Rights Division

United States Department of Justice
WASHINGTON, D.C. 20530

ASSISTANT ATTORNEY GENERAL

William T. Armstrong, Esq.
Foster, Lewis, Langley,
Gardner & Banack
1655 Frost Bank Tower
San Antonio, Texas 78205

11 DEC 1979

Dear Mr. Armstrong:

This is in reference to the redistricting of county commissioner precincts, justice of the peace precincts and voting precincts in Medina County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on October 12, 1979.

We have given careful consideration to the information you have provided as well as to that available from Bureau of the Census data and from other interested parties. Our analysis reveals that the proposed change in the line dividing Commissioner Precincts 1 and 3 does little to change the situation to which the Attorney General interposed an objection on April 14, 1978. A comparison of the 1979 plan with the 1978 plan reveals an increase in the minority population of 1.47 percent in proposed Precinct 3. When compared with the only legally enforceable plan (pre-1978), an increase of 7.20 percent (49.68 to 56.88) is noted in Precinct 3, while Precinct 1 has been reduced by 12.26 percent from 56.69 percent to 44.43 percent in minority population.

As we indicated in our letter of April 14, 1978, Mexican Americans have been unable to achieve representation on the County Commission with a population majority of 56.69 percent in existing Commissioner Precinct 1. An increase of .19 percent as represented by the 56.88 percent total minority population in Precinct 3 would hardly seem to change this situation. Although Mexican Americans will have a population majority in Precinct 3, they likely will be unable to elect a candidate of their choice because of the fall-off in that percentage due to a smaller voting age population and a lower registration rate among Mexican Americans, and because of the racially polarized voting pattern that seems to exist in Medina County.

In addition, as indicated in our letter of April 14, 1978, it has been demonstrated that the minority population of Medina County is concentrated in such a way as to make it possible to develop a plan that would include a district which would include a minority percentage of the population at a level that would assure minority voters meaningful access to the political process. See, e.g., Mississippi v. United States, C.A. No. 78-1425 (D. D.C. June 1, 1979) and United Jewish Organizations v. Carey, 430 U.S. 144 (1977). Furthermore, we have been presented with no justification for the continued substantial fragmentation of the Mexican American community in the City of Hondo.

Under Section 5 the submitting authority has the burden of proving that the change in question is neither retrogressive nor unconstitutional with respect to protected minorities. Beer v. United States, 425 U.S. 130, 141-142 (1976). Under the circumstances I must conclude that, for the same reasons described in my letter of objection of April 14, 1978, Medina County has again failed to sustain its burden of proof. Therefore, on behalf of the Attorney General, I must object to the submitted reapportionment plan.

With regard to the changes in the justice of the peace precincts and the voting precincts, no determination will be made at this time pending resolution of the redistricting issue since the realignments of the justice of the peace and voting precincts are dependent upon the change in Commissioner precinct lines.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting of the commissioner precincts legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action the County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Donna Clarke (202--724-7440) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

25 FEB 1980

Mr. George H. Spencer
Clemens, Spencer, Welmaker & Finck
1805 National Bank of Commerce Building
San Antonio, Texas 78205

Dear Mr. Spencer:

This is in response to your letter dated January 16, 1980, in which you requested that the Attorney General reconsider his December 7, 1979, objection to the redistricting of Commissioner, Justice of the Peace and Constable Precincts by Atascosa County, Texas, in light of the decision in Garcia v. Uvalde County, 455 F. Supp. 101 (W.D. Tex. 1978), aff'd sub nom. United States v. Uvalde, 439 U.S. 1059 (1979). Your letter was received on January 22, 1980.

In Garcia, the court found (p. 106) that the Attorney General had repeated his request for information which the submitting authority had already stated to be unavailable and concluded that "[t]he submission was, therefore, according to the regulations, complete." The circumstances surrounding the submission from Atascosa County are distinguishable from those present in Uvalde County.

Our initial request for information of January 26, 1977, asked for the number or percent of black or Spanish-heritage residents and voters of each of the precincts, for the results, by voting precinct, of all county elections held since January 1, 1972, in which minority candidates have participated, and for the names and business-hour telephone numbers of Spanish-heritage residents who were consulted regarding the redistricting plan. No response was made to this request nor have we been advised that the requested information is unavailable.

To the contrary, the information requested does appear to be available to the submitting authority since voter lists and county election results are maintained at county offices. Also the undated narrative, "Atascosa County--A Redistricting Proposal," submitted by the county, contains a chart breaking down the 1970 Census population figure for the county into the four proposed commissioner precincts and the narrative of the methodology employed to arrive at those figures suggests that this process could have been followed to determine the pre-redistricting composition of each commissioner precinct.

In addition to these items, an explanation was requested in our letter dated August 11, 1977, of a discrepancy in the data initially submitted from that provided in response to our request for additional information concerning the population figures given for Precinct No. 2. This explanation was never received.

In light of the circumstances noted above, we do not believe this submission can be considered to have been completed as was the one in Uvalde County. Accordingly, the Attorney General is unable to withdraw his objection based on the decision in the cited case. However, as stated in our letter of objection, should the county elect to provide the requested information the Attorney General will evaluate the matter on its merits and determine whether there is a basis for withdrawing the objection.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action Atascosa County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Elda Gordon (202--724-6675) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

Office of the Assistant Attorney General *Washington, D.C. 20530*

Felix J. Stalls, III, Esq.
County Attorney
Cochran County Courthouse
Room B-2
Morton, Texas 79346

25 FEB 1980

Dear Mr. Stalls:

This is in reference to the redistricting of the commissioners' precincts and the creation of additional voting precincts and polling places in Cochran County, Texas. Preliminary materials relating to these changes were received by us initially on April 16, 1976.

On June 7, 1976, we wrote to the then-County Attorney requesting the information with respect to these voting changes which we believed to be necessary to enable us to determine, as required by Section 5 of the Voting Rights Act, whether the redistricting had the purpose or the effect of abridging the right to vote on account of race, color, or membership in a language minority group. Having received no response and having learned that the addressee of our previous request was no longer in office, on August 21, 1977, we repeated that request to you. (Copies of our letters are attached.) Your responding letter, received by us on December 21, 1977, provided some, but not all, of the information requested and we renewed our request for the unprovided information in our letter of February 21, 1978. (Copy attached). To date we have not received the remainder of the requested information, specifically, answers to our inquiries concerning the number of registered voters, by race, in each commissioner and voting precinct before and after the change.

This information is especially important in reviewing this submission because you have indicated that total population statistics, by race, for the commissioner and voting precincts before and after the change are not available and you were able to provide only percentage estimates. On the other hand, we are aware from experience that the county, in order to conduct its elections, must maintain some record of registered voters and the precincts in which they reside and it would not appear to be a difficult task to identify the Spanish surnamed voters on the lists.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In failing to provide the Attorney General with the information necessary for the proper evaluation of your submission, you have failed to sustain your burden of proof. Therefore, on behalf of the Attorney General, I must object to the submitted changes.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b), and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. Such a request would be particularly appropriate were the county to provide the information which was requested by the Attorney General but never provided. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting of commissioner precincts and the creation of additional voting precincts and polling places legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action Cochran County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Hallue E. Wright (202--724-7170) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

1 FEB 1980

J. C. Reagan, Esq.
Bartram, Reagan,
Burrus & Dierksen
Post Office Box 69
205 North Seguin Avenue
New Braunfels, Texas 78130

Dear Mr. Reagan:

This is in reference to the redistricting of commissioner precincts and the change in the boundaries of Voting Precincts 10 and 14 in Comal County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was received on May 7, 1979. On July 6, 1979, we sent a letter requesting additional information necessary to complete our review of this submission. A copy of that letter is attached.

Our records indicate that, to date, we have received no response to our request. We have obtained answers to some of our questions from other sources; however, we still need the following previously requested information to evaluate properly the changes in question:

1. Maps of the county and of the City of New Braunfels showing the existing boundaries and boundaries after the change with areas of minority population concentrations so indicated; it would be most helpful to have these areas of concentration shown as portions of census enumeration districts if possible.

2. Reasons for selecting the plan that was adopted. (We understand that the Mexican American Legal Defense and Education Fund (MALDEF) submitted two other plans for your consideration.)

3. A description of any verification of the accuracy of the methodology of determining the population and racial composition of split enumeration districts.

4. Any estimates that have been made of the change in the total population or racial or language minority group composition of the county since the 1970 Census.

5. The number of registered voters by race or language minority group for each voting precinct in the county. If exact statistics are not available, please provide your best estimates and the basis for those estimates.

6. Primary and general election results, by precinct, of all contests in which a Mexican American has competed for the position of County Commissioner, Justice of the Peace, Constable, Sheriff, Tax Assessor/Collector, or School Trustee or for any other county office since November 1, 1972. We understand that there was a Mexican American candidate for constable in 1976 and that there is some discrepancy in the election results. Therefore, please provide both unofficial newspaper tallies and official results, by precinct, for this election.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g. Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In failing to provide the Attorney General with the information necessary for the proper evaluation of your submission, you have failed to sustain your burden of proof. Therefore, on behalf of the Attorney General, I must object to the submitted changes.

Of course, as provided by Section 5 of the Voting Rights Act you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that those changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection and, in this instance, we will reconsider the matter upon receipt of the additional information we previously requested. However,

until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting of commissioner precincts and the changes in Voting Precincts 10 and 14 of Comal County, Texas, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter what course of action Comal County plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Donna Clarke (202--724-7440) of our staff, who has been assigned to handle this submission.

Sincerely,

DREW S. DAYS III
Assistant Attorney General
Civil Rights Division

Office of the Assistant Attorney General Washington, D.C. 20530

J. W. Gary, Esq.
Gary, Thomasson, Hall & Marks
817 N. Carancahua
Post Office Box 371
Corpus Christi, Texas 78403

APR 16 1980

Dear Mr. Gary:

This is in reference to the nine polling place changes and apportionment plan providing for election of four members from single-member districts and three members at-large from residency districts, with staggered terms, for the Corpus Christi Independent School District in Nueces County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on February 25, 1980.

The Attorney General does not interpose any objections to the nine polling place changes. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes.

With respect to the apportionment plan, we have given careful consideration to the materials you have submitted, as well as information and comments from other interested parties. We have noted particularly the history of purposeful racial discrimination by and within the district, an apparent pattern of racial bloc-voting in district elections, and the use of racial campaign tactics in some district elections. We note that the submitted plan provides for only one district in which Mexican-American voters will have a realistic opportunity to elect a representative of their choice, in a school district which is over forty percent Mexican American in population. We note also that Mexican American voters likely would have a viable majority in a second district but for the over-population of proposed District 1. We note further that the provision for residency districts has the same effect of preventing single-shot voting for the at-large seats as the numbered post provision struck down in LULAC v. Williams, C.A. No. 74-C-95 (S.D. Tex., Oct. 2, 1979).

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In the particular context of the Corpus Christi Independent School District, the standard of review is governed by the standard expressed in Kirksey v. Board of Supervisors of Hinds County, Mississippi, 554 F.2d 139, 143 (5th Cir. 1977) (en banc):

> The court must then look to the matter of whether the redistricting plan, whether adopted by legislative processes or proposed to be adopted and ordered by the court, will continue in effect an existent denial of access to the minority. Both the Supreme Court and this circuit have firmly held that where a reapportionment plan is formulated in the context of an existent intentional denial of access by minority group members to the political process, and would perpetuate that denial, the plan is constitutionally unacceptable because it is a denial of rights guaranteed under the Fourteenth and Fifteenth Amendments.

In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that your burden of proof has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted apportionment plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the submitted electoral system legally unenforceable.

The objection here interposed may be readily remedied, as the foregoing discussion of our rationale suggests. If the residency districts for the at-large seats and the over-population of District 1 were eliminated in a fairly drawn 4:3 plan, or if an alternative plan were devised which provided for fair political access for both black and Hispanic minorities, our concerns would be alleviated.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Corpus Christi Independent School District plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Zaida Friedman (202--724-7187) of our staff, who has been assigned to handle this submission.

Sincerely,

Drew S. Days III
Assistant Attorney General
Civil Rights Division

12 AUG 1980

Honorable T. L. Harville
Jim Wells County Judge
200 North Almond Street
Alice, Texas 78332

Dear Judge Harville:

This is in reference to the February, 1980, redistricting plan for Jim Wells County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. Your submission was completed on June 13, 1980.

We have analyzed carefully the materials contained in your submission, data obtained from the Bureau of the Census and comments from other interested persons. Our analysis reveals that while the proposed plan adequately deals with some of the concerns we had in the previously submitted plan, the plan continues to dilute the voting strength of the minority concentration that exists in the southern portion of the City of Alice by distributing those voters among all four commissioner precincts. On the other hand, it appears that a number of plans were available to the Commissioners Court that would not have had that effect. The adoption of a plan that would maintain Mexican-American voting strength at a minimum level, where alternative options would provide a fairer chance for minority representation, is relevant to the question of an impermissible racial purpose in its adoption (see Wilkes County v. United States, 450 F. Supp. 1171 (D.D.C. 1978), aff'd 439 U.S. 999; see also, 28 C.F.R. 51.19)), particularly where, as here, the plan was drawn with no significant input from the affected minority group.

Under Section 5 of the Voting Rights Act the submitting authority has the burden of proving that a submitted change has no discriminatory purpose or effect. See, e.g., Georgia v. United States, 411 U.S. 526 (1973); 28 C.F.R. 51.19. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted change.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (28 C.F.R. 51.21(b) and (c), 51.23, and 51.24) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia Court obtained, the effect of the objection by the Attorney General is to make the redistricting plan for Jim Wells County, Texas, legally unenforceable.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us within twenty days of your receipt of this letter of the course of action the Jim Wells County Commissioners Court plans to take with respect to this matter. If you have any questions concerning this letter, please feel free to call Ms. Elda Gordon (202--724-7403) of our staff, who has been assigned to handle this submission.

Sincerely,

JAMES P. TURNER
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

22 JAN 1982

Jeffrey A. Davis, Esq.
Reynolds, Allen, Cook,
Pannill & Hooper
1100 Milam Building, 16th Floor
Houston, Texas 77002

Dear Mr. Davis:

This is in reference to the redistricting of the commissioners precincts of Uvalde County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received initially on October 29, 1981, and was completed by a corrective supplement on November 23, 1981.

We have made a careful analysis of the information that you have provided, the events surrounding the enactment of the change, the information in our files with respect to prior plans and elections in Uvalde County, and comments and information provided by other interested parties. On the basis of that analysis, we are unable to conclude that the new plan for the redistricting of commissisoners precincts does not have a discriminatory purpose or effect.

Our review of this matter shows that Uvalde County, like other Texas counties, is divided into four commissioners precincts, which are required, under the Fourteenth Amendment, to be equalized in population following decennial censuses. According to the 1980 census, the population of Uvalde County is 22,441, of whom Mexican-Americans constitute 55.5 percent. Because the plan previously in use had been held in violation of the one-person, one-vote requirement of the Fourteenth Amendment (Mata v. White, C.A. No. DR-79-CA-27 (W.D. Tex. Feb. 7, 1980)) the county, in 1981, adopted a new plan, which provides districts of relatively equal population.

Our analysis of the submitted plan indicates that its likely effect will be to dilute the voting strength of Mexican-American residents of Uvalde County. Our research indicates that polarized voting between Anglos and Mexican-Americans exists. Under the proposed plan Mexican-American voters will be able to elect a candidate of their choice to the commissioners' court in only one district, although Mexican-Americans now constitute a majority of the county's population. It would appear, also, that the plan unnecessarily fragments the Mexican-American community by placing an overly large number of Hispanics into Precinct 2 and dividing the remainder between Precincts 1 and 4, with the result that Mexican-American voters will not have a substantial influence on the election of commissioners in but one precinct. Moreover, our research further indicates that a plan which creates districts as equal in population as the adopted plan, and creates two districts in which Mexican-Americans would have a reasonable opportunity to elect candidates of their choice, could have been drawn without difficulty.

Under these circumstances we are unable to conclude, as we must under the Voting Rights Act, that the submitted plan does not have the purpose and will not have the effect of abridging the right to vote on account of membership in a language minority group. See Reer v. United States, 425 U.S. 130, 141 (1976); Wilkes County v. United States, 450 F. Supp. 1168, 1177-78 (D.D.C. 1978), affirmed 439 U.S. 999 (1978); Georgia v. United States, 411 U.S. 538 (1973). Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia court is obtained, the effect of the objection of the Attorney General is to make the 1981 plan legally unenforceable.

Because of the pending litigation concerning the districting of the commissioners precincts of Uvalde County, Mata v. White, supra, I am taking the liberty of providing a copy of this letter to the court and to counsel for the plaintiffs.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Dorwin W. Suttle
United States District Judge

Jose Garza, Esq.

Jerry White
Uvalde County Judge

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

18 FEB 1982

Jeffrey A. Davis, Esq.
Reynolds, Allen, Cook,
Pannill & Hooper
1100 Milam Building, 16th Floor
Houston, Texas 77002

Dear Mr. Davis:

This is in reference to the redistricting of the commissioners precincts of Uvalde County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. Your submission was received on February 4, 1982. As pointed out in your submission, the fact that there is pending litigation, a hold over of incumbent commissioners and the need to prepare for the May 1, 1982 election, all require an expedited review of this submission. The analysis which follows is therefore based on the facts presently available to us. We are prepared, of course, to consider any supplemental information you may wish to provide.

We have made a careful analysis of the information that you have provided, the events surrounding the enactment of the change, the information in our files with respect to prior plans and elections in Uvalde County, and comments and information provided by other interested parties. On the basis of that analysis, we are unable to conclude that the new plan for the redistricting of commissioners precincts does not have a discriminatory purpose or effect.

Our review of this matter shows that Uvalde County, like other Texas counties, is divided into four commissioners precincts which are required, under the Fourteenth Amendment, to be equalized in population following decennial censuses. According to the 1980 census, the population of Uvalde County is 22,441, of whom Mexican-Americans constitute 55.5 percent. Because the plan previously in use had been held in violation of the one-person, one-vote requirement of the Fourteenth Amendment (Mata v. White, C.A. No. DR-79-CA-27 (W.D. Tex. Feb. 7, 1980)) the county, in 1981, adopted a new plan, which provided for districts of relatively equal population. The 1981 plan was submitted for preclearance pursuant to Section 5 of the Voting Rights Act and on January 22, 1982, a timely objection was interposed.

As with the previous plans, our analysis of the current plan under submission indicates that its inevitable effect will be to dilute the voting strength of Mexican-American residents of Uvalde County. For instance, our review shows that this plan, as did the 1981 plan, unnecessarily fragments the Mexican-American community by placing a large number of Mexican-Americans in Precinct 2, while dividing the remaining Mexican-American concentration in the City of Uvalde between Precincts 1 and 4. The plan accomplishes this result through the use of a strange hourglass configuration for which the county has presented no explanation reflecting a legitimate state interest.

This fragmentation has the effect of minimizing the potential voting strength of the Mexican-American citizens of Uvalde County. Under the proposed plan Mexican-Americans stand a clear chance of electing a candidate of their choice to the commissioners court in only one precinct, although they constitute a majority of the county's population. In this regard, while we note the county's representation that proposed Precinct 4 is 65% Mexican-American, our analysis of the census data indicates that the percentage is well below that figure. We are particularly concerned about this discrepancy because applying the stated percentages accompanying your latest submission to the percent populations provided result in between 500 to 600 more Mexican-Americans in the county than established by the census count. Without a clarification of these inconsistencies, we are unable to preclear the current submission. As stated in the January 22, 1982, letter of objection, our research indicates that a logically formulated plan, including districts which meet one-person, one-vote standards, and two districts in which Mexican-Americans would have a reasonable opportunity to elect candidates of their choice, can be drawn without difficulty.

Under these circumstances we are unable to conclude as we must under the Voting Rights Act, that the submitted plan does not have the purpose and will not have the effect of abridging the right to vote on account of membership in a language minority group. See Beer v. United States, 425 U.S. 130, 141 (1976); Wilkes County v. United States, 450 F. Supp. 1168, 1177-78 (D. D.C. 1978), affirmed 439 U.S. 999 (1978); Georgia v. United States, 411 U.S. 538 (1973). Accordingly, on behalf of the Attorney General, I must interpose an objection to the redistricting plan.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change neither has the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, the Procedures for the Administration of Section 5 (Section 51.44, 46 Fed. Reg. 878) permit you to request the Attorney General to reconsider the objection. However, until the objection is withdrawn or the judgment from the District of Columbia court is obtained, the effect of the objection of the Attorney General is to make the 1981 plan legally unenforceable.

Because of the pending litigation concerning the districting of the commissioners precincts of Uvalde County, Mata v. White, supra, I am taking the liberty of providing a copy of this letter to the court and to counsel for the plaintiffs.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

cc: Fred Shannon
United States District Judge

Jose Garza, Esq.

Jerry White
Uvalde County Judge

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

November 18, 1985

Honorable J. F. Brandon
Lynn County Judge
P. O. Box 1256
Tahoka, Texas 79373

Dear Judge Brandon:

This refers to the redistricting of justice of the peace and constable precincts and the reduction in the number of justices of the peace and constables from five to two in Lynn County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your response to our request for additional information on September 18, 1985.

We have considered carefully the materials you have provided, as well as information and comments from other interested parties. At the outset, we note that the current plan provides for one district in which minority group members comprise a 57 percent majority, and that the minority population of Lynn County is situated in such a way that a variety of fairly drawn plans would allow the retention or enhancement of that majority. However, when the proposed plan is analyzed with 1980 Census data, the highest combined minority percentage in any district is 51 percent, and both districts have clear white voting age majorities. These facts indicate at least initially that the proposed districting plan would have a retrogressive effect on minority voting strength.

In order to examine further the purpose and effect of the proposed changes, we requested specific additional information, including election returns for all contests within the county which have involved minority candidates, current

voter registration data, and maps showing the location of the county's minority population concentrations so that we could judge their treatment by the proposed districting. To date, much of this information which would enable us to reach a reasoned decision has not been furnished and some of that which has been supplied is not consistent with other information available to us. For example, the population statistics you have provided for the existing districts are, without explanation, significantly different from the statistics provided in connection with our earlier review of those districts when they were adopted in 1982. Thus, while the data used in the plan submitted show whites as constituting only 40 percent of the county's population, the earlier submitted statistics, as well as Census data, show that whites constitute over 58 percent of the county's population, a difference that is not satisfactorily accounted for or explained in the submitted plan.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). Based on the circumstances discussed above, and in light of evidence of racial bloc voting in local elections and the absence of evidence of an effective opportunity for minority participation in designing the districting plan, we are unable to conclude that the county's burden has been met in this instance. Accordingly, I must, on behalf of the Attorney General, interpose an objection to the proposed districting plan.

With regard to the reduction in the number of justices of the peace and constables, this change does not appear on its face to be objectionable. However, it would be inappropriate to preclear such a change in the absence of a nondiscriminatory districting system for its implementation and, for that reason, an objection also is being interposed to that change pending the county's adoption of a districting plan that meets Section 5 requirements.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objections. However, until the objections are withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objections by the Attorney General is to make the redistricting and reduction legally unenforceable. 28 C.F.R. 51.9.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Lynn County plans to take with respect to this matter. If you have any questions, feel free to call John K. Tanner (202-724-8388), Attorney/Reviewer of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

September 26, 1988

Ann Clarke Snell, Esq.
Bickerstaff, Heath & Smiley
San Jacinto Center, Suite 1800
98 San Jacinto Boulevard
Austin, Texas 78701-4039

Dear Ms. Snell:

This refers to the reduction in the number of justice of the peace and constable precincts from five to one in Lynn County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on July 26, 1988.

We have considered carefully the information you have provided, as well as information from other interested parties and from the Section 5 submissions of prior redistricting plans in 1982 and 1985 for justice of the peace ("JP") precincts in Lynn County. As you know, on November 18, 1985, the Attorney General interposed an objection to the county's proposal to reduce the number of JP precincts from five to two and the associated redistricting plan. In that letter, we noted what appeared to be a pattern of racially polarized voting in local elections and, in that context, the changes appeared to have a retrogressive effect on the opportunity of minority citizens to participate in the political process. We also noted that much of the information we had requested to enable us to reach a more informed decision had not been furnished and that some of that which had been provided was inconsistent with other information available to us. Finally, we shared with you our observation that the reduction in the number of JP precincts did not appear on its face to be objectionable, but that an objection was necessary in the context of the implementing districting plan which was retrogressive to minority voting strength in the county.

The county now proposes to adopt a single, countywide JP precinct. In so doing, the county has not sought to provide any of the information which we explained was lacking in the prior submission nor has the county clarified any of the inconsistencies which handicapped our prior review. However, on the basis of the information available to us it appears that the new plan will not only continue but increase the retrogression which led to the 1985 objection. Also, we find particularly relevant the fact that, as with the 1985 plan, minority citizens were not allowed the opportunity to participate in the process leading to the adoption of the present proposal.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the proposed reduction in the number of justice of the peace and constable precincts from five to one.

In interposing this objection we wish to reiterate that a reduction in the number of JP precincts, if implemented by a fairly drawn, nondiscriminatory districting plan, should encounter no difficulty satisfying Section 5 preclearance standards. In that regard, we note that the state constitution (art. 5, sec. 18) continues to provide Lynn County the authority "from time to time, for the convenience of the people, . . . [to] divide[the county] into not more than four precincts."

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that the instant changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the proposed reduction legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the county plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

OCT 14 1986

Dr. William J. Campion
President, Trinity Valley Community
College District
500 South Prairieville Street
Athens, Texas 75751

Dear Dr. Campion:

This refers to the February 3, 1986, redistricting plan, the appointment of a board member to fill a vacancy in District 4, and a decrease in the length of the terms of two board members for the Trinity Valley Community College District (formerly known as the Henderson County Junior College District) in Anderson, Henderson, Hunt, Kaufman, and Van Zandt Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on August 12, 1986.

We have considered carefully the information you have provided as well as information received from other interested parties. At the outset, we note that according to the 1980 Census the proposed redistricting plan is significantly malapportioned, with a top-to-bottom deviation of approximately 49 percent. The district with the largest minority population (District 6, 43% black) is overpopulated by approximately 31 percent. We understand that this malapportionment resulted from using registration (rather than population) data as the basis for the apportionment; however, it is now well established that registration data may validly be used only where it produces a plan "not substantially different from that which would have resulted from the use of a permissible population basis." Burns v. Richardson, 384 U.S. 73, 93 (1966). Of particular relevance to our review is the observation that, had the college district prepared a properly apportioned plan otherwise using its stated criteria, District 6 would have been majority black rather than minority black as constituted in the proposed plan. This consequence is highly significant given the racially polarized voting which exists in the Terrell area, where District 6 is located.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above and other relevant circumstances, including those surrounding the process that led to the adoption of the plan, I cannot conclude, as I must under the Voting Rights Act, that the college district has carried its burden in this instance of showing the absence of a discriminatory purpose. Therefore, on behalf of the Attorney General, I must object to the redistricting plan submitted by the Trinity Valley Community College District.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that this change has neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.44 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the redistricting plan legally unenforceable. 28 C.F.R. 51.9.

In view of the foregoing objection, it would not be appropriate to reach a determination on the two related changes submitted with the redistricting plan. 28 C.F.R. 51.20(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Trinity Valley Community College District plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Attorney/Reviewer in the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

April 18, 1988

David Ryan, Esq.
Henslee, Ryan & Grace
3432 Greystone Drive
Suite 200
Austin, Texas 78731

Dear Mr. Ryan:

This refers to the change in method of election from at large to four single-member districts and three at-large positions (without numbered positions), the districting plan, a majority vote requirement for trustees elected from districts, the implementation schedule, candidate qualifications, and the consolidation of seven polling places for the Marshall Independent School District in Harrison County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on March 29, 1988.

We have considered carefully the information you provided, as well as information from other interested parties and from the 1980 Census. Our analysis of the 1980 Census data indicates that the minority population figures for the proposed districts provided in your submission mistakenly include a double-count of Hispanic residents. In addition, the figures furnished for each of the districts show that the black population totals include Hispanics and others, even though there is no indication that these other minority residents ally themselves with blacks in school board elections. Thus, it would appear that, from the standpoint of the black non-Hispanic population, the proposed plan contains but a single majority black district, and that one at only 54.9 percent black. This contrasts significantly with the 57 percent and 55.7 percent "minority" populations for two districts as set forth in the information provided with the submission.

In this regard, we find it particularly noteworthy that the black community apparently has been seeking for many years to have the school district adopt single-member districts. It appears that the school district resisted these efforts while, at the same time, blacks consistently were defeated in contested school board elections. In fact, during the course of these events the Attorney General found it necessary in 1976 to interpose an objection to the school board's effort to impose a

majority vote requirement which had the potential for making it even more difficult for blacks to elect candidates of their choice. Racially polarized voting appears to characterize school board elections in the Marshall Independent School District and the school district so stipulated during the course of this submission. Under such circumstances, then, a serious question is raised as to whether the submitted plan affords the black constituency an equal opportunity to participate in the electoral process and to elect candidates of their choice to office.

With respect to the consolidation of polling places, a similar concern is raised since it appears that such a consolidation would make it more difficult for many black voters to participate in school board elections. While we recognize that there is a valid interest in eliminating election day problems engendered by the school district and the city holding elections on the same day at different polling locations, it appears that the school district had available to it alternatives which would have been not nearly so restrictive on polling place accessibility as the one adopted. That choice is particularly troubling when it is noted that the consolidation does not resolve the problem of voters having to vote at more than one polling place on election day and that no input on this important matter was sought from the minority community.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.39(e)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the change in the method of election as implemented by the instant districting plan, and to the polling place consolidation.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the change in method of election as implemented by the submitted districting plan and the consolidation of polling places legally unenforceable. 28 C.F.R. 51.10.

With regard to the candidate qualifications and the implementation schedule, we are unable to make a determination at this time since these changes are dependent upon the changes to which an objection is being interposed. See 28 C.F.R. 51.22(b).

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action Marshall Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

James P. Allison, Esq.
Allison & Associates
815 Brazos, Suite 204
Austin, Texas 78701

JUN 14 1988

Dear Mr. Allison:

This refers to the reduction in the number of justice of the peace and constable precincts, and the redistricting of such precincts in San Patricio County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C.1973c. We received the information to complete your submission on April 15, 1988. Although we noted your request for expedited consideration, we have been unable to respond until this time.

We have considered carefully the information you have provided, as well as comments and information received from other interested parties. At the outset, we note that almost half the county's population is Hispanic, and that the western and north-central portions of the county are predominantly Hispanic. Under the existing justice of the peace election system, four justice of the peace ("J.P.") districts are located in these predominantly Hispanic areas of the county while two such districts are located in the eastern portion of the county which is predominantly Anglo. Under the proposed system, the existing six districts would be reduced to four in that the four districts now existing in the predominantly Hispanic areas of the county would be consolidated into two districts. Thus, two justice of the peace positions (and two constable positions) would be eliminated and, given the pattern of polarized voting which appears to exist in the county, the opportunity presently enjoyed by Hispanics for electing candidates of their choice to the office of justice of the peace (and constable) would be significantly diminished, leading to a retrogression in their

ability to elect candidates of their choice to these offices. See Beer v. United States, 425 U.S. 130 (1976). We find this conclusion inescapable even though we recognize that the plan proposed for implementing this new districting concept is identical to the plan for the commissioners court which previously was granted Section 5 preclearance in a different context.

We have duly noted the county's explanation that these changes were adopted to equalize the workloads of the justices of the peace and to reduce the cost of operating the county's J.P. system. While these generally would appear to be appropriate concerns for the county to consider in evaluating the need for judicial-type offices of this nature, our information is that the commissioners made no comparative study of the workloads or the economic status of the J.P. offices before adopting the changes. As we understand it, they did not consult the J.P. reports (although such reports apparently were readily available) which would have informed them of the workload actually being handled by each justice and the revenue being returned to the county by each J.P. office. As a consequence, it appears that the proposed changes would in fact assign a substantial amount of additional work to the two J.P. offices (both located in the predominantly Hispanic area of the county) which already are the busiest while making no change with respect to the J.P. office (located in an Anglo majority district) which appears to have the least amount of work (and produces the smallest amount of revenue).

We also are not unmindful of the procedural concerns that attach to these changes. Thus, we understand that the commissioners at first sought to adopt these changes (at the July 13, 1987, meeting) without notifying or seeking any input from the affected justices of the peace or the affected communities. Indeed, the agenda notice for the July 13th meeting indicated only that minor changes were slated for adoption to realign the J.P. districts with election precinct boundaries (though no such change was proposed or needed for the J.P. districts located in the predominantly Hispanic portions of the county), and we understand that the county attorney subsequently advised that the agenda notice violated the Texas Open Meetings Act. One reason advanced at the meeting for approaching this issue in this manner was that the changes should be adopted promptly to avoid having members of the affected communities

present to oppose them. When, after the July 13th meeting, Hispanic residents of the county did express strong opposition to the changes, this led simply to a pro forma reconsideration of the prior action with no change in result.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that that burden has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the reduction in the number of justice of the peace and constable precincts and the districting plan adopted for its implementation.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the submitted changes legally unenforceable. 28 C.F.R. 51.10.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action San Patricio County plans to take with respect to this matter. If you have any questions, feel free to call Mark A. Posner (202-724-8388), Deputy Director of the Section 5 Unit of the Voting Section.

Sincerely,

Wm. Bradford Reynolds
Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20530

May 8, 1989

Dr. Ben Colwell
Superintendent, Refugio Independent
School District
P. O. Drawer 190
Refugio, Texas 78377

Dear Dr. Colwell:

This refers to the change in method of election from seven trustees elected at large (with numbered posts and plurality win) to five single-member districts and two at-large positions (plurality win), the districting plan, an implementation schedule which includes staggered terms for the two at-large seats, an annexation, and the selection of two polling places for the Refugio Independent School District in Refugio County, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submissions on March 7, 1989.

The Attorney General does not interpose any objection to the annexation. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such change. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

With regard to the remaining changes, we have given careful consideration to the materials you have provided, as well as information and comments from other interested parties. At the outset, we note that while the change in the method of electing the city council will provide minority voters with a greater opportunity to participate in the political process than under the current method, some of the information you have provided has been conflicting, and important elements of this

information remain incomplete. For example, your submission includes population by race and ethnicity on a block-by-block basis for some areas of the city, while for other areas the figures are essentially estimates, the reliability of which is open to serious question. It has been alleged, and the information available to us tends to confirm, that the proposed districting plan overconcentrates or "packs" minority voters into District 1, while a significant proportion of the remaining minority population is divided between Districts 3 and 4. In view of the apparent pattern of polarized voting in school district elections, it appears that this packing and fragmentation of the minority community denies Hispanic and black voters an equal opportunity to participate in the political process and elect candidates of their choice to office.

Our review also has revealed information to support the allegation that the mixed "5-2" system of district and at-large seats was selected over the seven single-member district system preferred by minority citizens so as to avoid the potential for fair minority representation in three majority-minority districts. In addition, the selection of staggered terms for the at-large seats would preclude minority voters from using the election device of single-shot voting and thus further limits the opportunity of minority voters to participate in the political process. Finally, we note that the polling places appear to have been chosen to benefit the white community and disadvantage minority voters, many of whom live a great distance from the proposed polling sites. We have received no adequate nonracial explanation for these decisions which appear to be the product of a decisionmaking process in which minority citizens did not have the opportunity to effectively participate.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has neither a discriminatory purpose nor a discriminatory effect. See Georgia v. United States, 411 U.S. 526 (1973); see also 28 C.F.R. 51.52. In light of the considerations discussed above, I cannot conclude, as I must under the Voting Rights Act, that the burden of showing the absence of a proscribed purpose has been sustained in this instance. Therefore, on behalf of the Attorney General, I must object to the submitted changes, with the exception of the annexation, as noted above.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect

of denying or abridging the right to vote on account of race, color, or membership in a language minority group. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgment from the District of Columbia Court is obtained, the effect of the objection by the Attorney General is to make the submitted changes legally unenforceable. 28 C.F.R. 51.10.

Lastly, we note that the school district has yet to seek review under Section 5 of its bilingual procedures though we requested that the district seek Section 5 clearance over five months ago, in our November 28, 1988, letter to you. We understand that the district is in the process of gathering the information necessary to make a Section 5 submission and, in view of the time that has passed, we would expect that such a submission should be forthcoming immediately. We would be happy to provide whatever assistance would be appropriate in this regard.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the Refugio Independent School District plans to take with respect to this matter. If you have any questions, feel free to call Sandra S. Coleman (202-724-6718), Deputy Chief of the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice
Civil Rights Division

Office of the Assistant Attorney General
Washington, D.C. 20530

October 27, 1989

Richard D. Cullen, Esq.
Cullen, Carsner, Seerden & Cullen
P. O. Box 2938
Victoria, Texas 77902

Dear Mr. Cullen:

This refers to the 1977 charter revisions, which provide for an increase in compensation for the mayor and councilmembers; the change in the method of election from five at large, with numbered posts and majority vote, to four single-member districts and three at large, all by plurality vote for regular two-year terms; the districting plan; the increase in the number of councilmembers from five to seven; the provision that the two nonmayoral at-large members will be elected for concurrent terms; the implementation schedule, including the temporary increase in the term of mayor and a change in staggering of terms from 3-2 to 4-3; the elimination of numbered posts and the related change in ballot format; a polling place change; a precinct realignment and the establishment of an additional precinct and the polling place therefor; the candidate qualification residency requirement; and the repeal of the candidate qualification requirement in Article III, Section 3.02(a)(3) of the charter, for the City of Cuero in DeWitt County, Texas, submitted to the Attorney General on January 30, 1989, pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received the information to complete your submission on August 28, 1989.

The Attorney General does not interpose any objections to the 1977 charter amendments, the polling place change, the precinct realignment, the establishment of an additional precinct and a polling place therefor, and the repeal of the candidate qualification requirement in Article III, Section 3.02(a)(3) of the city charter. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

cc: Public File

Defendant's Exhibit # DE-005646

With regard to the remaining changes, we have considered carefully the information and materials you have supplied, along with information from other interested parties and the Bureau of the Census. At the outset, we note that even though minority residents constitute 47 percent of the city's total population, no minority member presently is among those elected to the council and at no time in the past has the city council included more than one minority member, circumstances that appear to be due largely to the combination of the existing at-large structure with a pattern of racially polarized voting in municipal elections. We further note that the process leading to adoption of the proposed changes was the result of litigation by minority citizens challenging the city's existing at-large election system under Section 2 of the Voting Rights Act and that those plaintiffs are strongly opposed to the manner in which the new council is to be elected, including the use of any at-large positions other than the mayor.

We see no basis for interposing an objection to the proposed use of two at-large seats in the new council. The features most often associated with minimizing minority representation -- numbered posts and majority vote -- have been eliminated. However, we cannot reach a similar conclusion with respect to the districts selected for the new plan. According to our information, a last minute change was made to modify the districts to place a white incumbent in one of the predominately minority districts. This change reduced the minority proportion in this district from 65.2 to 60.7 percent. The modification of districts solely to protect the interests of a white incumbent raises serious questions under the Act. See Ketchum v. Byrne, 740 F.2d 1398, 1408 (7th Cir. 1984).

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of showing that a submitted change has no discriminatory purpose or effect. See Georgia v. United States, 411 U.S. 526 (1973); see also the Procedures for the Administration of Section 5 (28 C.F.R. 51.52(c)). In satisfying its burden, the submitting authority must demonstrate that the proposed changes are not tainted, even in part, by an invidious racial purpose; it is insufficient simply to establish that there are some legitimate, nondiscriminatory reasons for the voting changes. See Village of Arlington Heights v. Metropolitan Housing Development Corp., 429 U.S. 252, 265-66 (1977); City of Rome v. United States, 422 U.S. 156, 172 (1980); Busbee v. Smith, 549 F. Supp. 494, 516-17 (D.D.C. 1982), aff'd 459 U.S. 1166 (1983). In light of the circumstances discussed above, I cannot conclude, as I must under the Voting Rights Act, that the city has sustained its burden in this instance. Therefore, on behalf of the Attorney General, I must object to the districting plan proposed by the City of Cuero for implementing its proposed 4-2-1 election method.

Of course, as provided by Section 5 of the Voting Rights Act, you have the right to seek a declaratory judgment from the United States District Court for the District of Columbia that these changes have neither the purpose nor will have the effect of denying or abridging the right to vote on account of race or color. In addition, Section 51.45 of the guidelines permits you to request that the Attorney General reconsider the objection. However, until the objection is withdrawn or a judgement from the District of Columbia Court is obtained, the method of election changes and districting plan remain legally unenforceable. 28 C.F.R. 51.10.

Because the proposed implementation schedule has been established to implement the objected-to changes, the Attorney General is unable to make a determination with regard to it. See 28 C.F.R. 51.35.

To enable this Department to meet its responsibility to enforce the Voting Rights Act, please inform us of the course of action the City of Cuero plans to take with respect to these matters. If you have any questions, feel free to call Ms. Lora Tredway (202-724-8290), an attorney in the Voting Section.

Sincerely,

James P. Turner
Acting Assistant Attorney General
Civil Rights Division

U.S. Department of Justice

Civil Rights Division

Office of the Assistant Attorney General

Washington, D.C. 20035

MAY 6 1991

Analeslie Muncy, Esq.
City Attorney
1500 Marilla, 7-B North
Dallas, Texas 75201

Dear Ms. Muncy:

This refers to proposed amendments to the municipal charter of the City of Dallas which provide for an increase in the size of the city council from eleven to fifteen members; a change in the method of election for council members and mayor from election from eight single-member districts and three at-large seats, including the mayor, for concurrent terms by majority vote, to a 10-4-1 election system, which includes ten single-member local districts, four single-member regional quadrant districts, and the mayor at large for concurrent terms by majority vote; a change from a two-year to a four-year term for mayor; a decrease in the number of consecutive terms for the mayor; the changes in the definition of term in order to determine the number of consecutive terms served for mayor; the changes in the definition of term to determine the number of consecutive terms for non-mayoral councilmembers; the change in the effective date for new terms of office for mayor and council; the changes in candidate qualification (Chapter IV, Section 6); the alteration in ballot language to implement the proposed 10-4-1 method of election (Chapter IV, Section 8); the changes in the powers and duties of the mayor and council pursuant to Chapter III, Section 2; Chapter XVI, Section 1; Chapter XVII, Section 2; and Chapter XXIV, Section 13; and the 1991 redistricting plan for the 10-4-1 election system for the City of Dallas in Collin, Dallas, Denton, Kaufman, and Rockwall Counties, Texas, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your last submittal of information necessary to review these matters on May 3, 1991.

We have carefully reviewed the information you have provided, along with information available to us from related Section 5 submissions, the Bureau of the Census, and other interested parties. At the outset, we note that 1990 Census data reflect a significant increase in the city's Hispanic proportion

of total population and that black and Hispanic residents now constitute 50 percent of the city's total population. We also note that the federal district court has found that the existing 8-3 election method for the city council violates Section 2 of the Voting Rights Act and has ordered new elections as soon as possible under a plan that will "remedy the adverse effects of the 8-3 system -- the denial of equal access to the City's political process -- which African[-Americans] and Mexican-Americans have suffered in Dallas, for some 10-15 years." Williams v. City of Dallas, 734 F. Supp. 1317, 1412 (N.D. Tex. 1990) (liability); No. 3-88-1152-R (N.D. Tex.) (Feb. 1, 4, 5, and 27, 1991) (remedy); 59 U.S.L.W. 3672 (U.S. Apr. 2, 1991) (No. A-716), denying application to vacate stay from No. 91-1178 (5th Cir. Mar. 15, 1991) (order staying remedial orders). In its most recent order the court of appeals deferred a review of the merits of the appeal in order to provide a "reasonable time" for the Justice Department to review a submission of a change in the method of election and a redistricting plan proposed by the city.

Under Section 5 of the Voting Rights Act, the submitting authority has the burden of demonstrating that a proposed change does not have a racially discriminatory purpose or effect. Georgia v. United States, 411 U.S. 526 (1973). In addition, where, as here, an existing election system has been held by the court to be in violation of the Voting Rights Act, the affected jurisdiction not only bears the burden of demonstrating that the proposed plan is free of the proscribed purpose and effect, but also the plan must remedy the dilution found by the court to exist. See S. Rep. No. 417, 97th Cong., 2d Sess. 31 (1982). See also Dillard v. Crenshaw County, 831 F.2d 246, 249 (11th Cir. 1987); Edge v. Sumter County Sch. Dist., 775 F.2d 1509, 1510 (11th Cir. 1985). The proposed 10-4-1 election method now before us for review under Section 5 is the city's proposal to remedy the violation found by the Williams court.

In addressing these matters, the city has presented to us alternative proposals consisting of one component of four quadrant districts [4C] and two alternative components for the ten local districts [10F(3) and 10I(1)]. You have explained that the city council has formally adopted both ten-district components and that while 10F(3) initially was the city's preferred plan, the city now considers 10I(1) to be its preferred ten-district plan. The city maintains that its proposed electoral system and the redistricting plan have no racially discriminatory purpose or effect and provide minority voters with an equal opportunity to participate and elect their chosen candidates. Concerns have been raised, however, that under the proposed "10-4-1" system it is not possible to devise a plan in which minority voters will be afforded the same opportunity as white voters to elect their preferred candidates to the city council. Our review of the alternatives currently under submission to us lends some credence to those concerns.